



June 8, 2011

Board of Commissioners  
California Energy Commission  
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**DOCKET**

**07-AFC-6**

DATE Jun 08 2011

RECD. Jun 08 2011

Presiding Member's Preliminary Decision Comments  
Re: Docket Number: 07-AFC-06

Power of Vision (POV) and the several thousand individuals that signed a petition against licensing the California Energy Center Project (CECP)<sup>1</sup>, spoke at the Evidentiary Hearings and have sent letters of protest to the California Energy Commission are stunned at the decision in the Presiding Member's Preliminary Decision (PMPD). As representatives of the people who live in Carlsbad, POV's point of view should be considered by the CEC as worthwhile and worthy of comment in the PMPD. While we understood that our fight was an up-hill battle, we at least expected the commission and staff to recognize our concerns and address the issues facing the community by the proposed CECP. We did not expect to be completely ignored on several issues. In the interest of brevity, POV will once again briefly outline areas that need to be addressed. We understand the CEC is charged with locating power plants. However, your own regulations dictate that you must consider local plans.<sup>2</sup> Just because CEC staff believes Carlsbad has complicated land use documents is not a valid reason to ignore those documents

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<sup>1</sup> Exhibit # 738

<sup>2</sup> § 25003. **Legislative finding; consideration of state, regional and local plans**  
The Legislature further finds and declares that in planning for future electrical generating and related transmission facilities state, regional, and local plans for land use, urban expansion, transportation systems, environmental protection, and economic development should be considered

and the required process. The Carlsbad process has been created to protect the community from unsightly and inappropriate development. The land use protections the PMPD completely ignores are detailed below.

**General Plan Consistency.** Sited in the record numerous places and testified to at the Evidentiary Hearings by POV, the City of Carlsbad, The Housing & Redevelopment Agency and Terramar. CECP as currently designed is NOT consistent with the Carlsbad General Plan.

**CECP is not a public utility, but rather a merchant utility.** The zone allows for public utility (PU). The commission itself recognized this issue in the Chula Vista Energy Upgrade Project (CVEUP), when it determined a merchant utility could not be considered a public utility<sup>3</sup> and therefore not an appropriate use/applicant in the PU zone.

**Updated Precise Development Plan** is required by the City of Carlsbad, yet the PMPD does not require the applicant to submit such a document. The CEC determined CVEUP did not meet LORS when the applicant failed to provide the required updated precise development plan in a remarkably similar situation.

**In a similar situation, Land-use changes** were a factor in the CEC's denial of CVEUP and yet not considered in Carlsbad<sup>4</sup> when both cities passed ordinances that dealt with licensing of a power plant after the applicant's AFC's were submitted.

**Agua Hedion Land Use Plan (AHCLUP)**, which dictates building height and setbacks...none of which CECP meet.

**South Carlsbad Coastal Redevelopment Area (SCCRA)** extraordinary public benefit finding cannot be made for CECP. The PMPD claims CECP provides regional reliability which

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<sup>3</sup> "MMC sells electricity to utilities but it not itself a utility. The CVEUP is therefore not a 'public or quasi-public', use." (CEC ruling June 17, 2--9

<sup>4</sup> Urgency Ordinance CS067 prohibiting any new or expanded thermal electric power generation facilities located in Carlsbad coastal Zone, October 20, 2009 and December 22, 2009 passed resolutions 2009-233 and 482 finding that the proposed Carlsbad Energy Center Project is inconsistent with all applicable local and related land LORS.

then will meet Carlsbad's extra-ordinary public benefit requirement for SCCRA. POV believes the CEC's hypothesis is not correct. The local documents specify benefits to accrue to Carlsbad citizens, not the region. And on the subject of regionally reliability, how can the CEC assume the plant is necessary when the region's own transmitter (SDG&E) does not believe CECP is necessary for their needs?<sup>5</sup> Encina is no longer used for reliability as they were removed from RMR status December 31, 2007 and currently carry a tolling agreement that expires on a yearly basis on December 31st.<sup>6</sup>

**Carlsbad Fire Chief's** requirement for a 50 ft fire road was completely ignored by CEC.<sup>7</sup>

**Failure to consider I-5 widening.** Cumulative visual and noise impacts combined with a widened I-5 will degrade resident's quality of life and health.

**No public benefit as required by the commission<sup>8</sup>.** The PMPD does not require the applicant to provide any public benefit besides a disputed rail trail that was already in the City of Carlsbad's future plans. This is direct violation of CEC's own regulations

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<sup>5</sup> Public Utilities Commission, Application No: A.11-05-xxxm page 10. Third, subsequent to the Commission's resource need determination for SDG&E, the State Water Resources Control Board adopted an OTC policy that is intended to phase out or greatly reduce the use of coastal and estuarine waters for power plant cooling.<sup>17</sup> This regulation policy dictated that the Encina Power Plant (960 MW) must meet this new obligation by December 31, 2017. Accordingly, SDG&E believes it is prudent, if not necessary, to plan for Encina's existing capacity to be retired in anticipation of this date. For this Application, SDG&E recommends that the Commission assess not only SDG&E's need in 2015 but also through 2018 on the reasonable assumption that the Encina Power Plant will be retired in full at the end of 2017. SDG&E assumes the retirement of Encina units 1, 2 and 3, representing a total of 320 MW by 2013, with the remaining capacity to be retired in 2017.

<sup>6</sup> Confirmed by Steve Haines at CPUC

<sup>7</sup> The California Fire Code Section 503.2.2 states "The *fire code official* shall have the authority to require an increase in the minimum access widths where they are inadequate for fire or rescue operations."

<sup>8</sup> **§ 25529. Public use area; maintenance by applicant or dedication to local agency or state**  
When a facility is proposed to be located in the coastal zone or any other area with recreational, scenic, or historic value, the commission shall require, as a condition of certification of any facility contained in the application, that an area be established for public use, as determined by the commission. Lands within such area shall be acquired and maintained by the applicant and shall be available for public access and use, subject to restrictions required for security and public safety. The applicant may dedicate such public use zone to any local agency agreeing to operate or maintain it for the benefit of the public. If no local agency agrees to operate or maintain the public use zone for the benefit of the public, the applicant may dedicate such zone to the state. The commission shall also require that any facility to be located along the coast or shoreline of any major body of water be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.

**Viable alternatives were dismissed in the PMPD.** <sup>9</sup> City of Carlsbad Staff Joe Garuba testified at the Evidentiary hearings<sup>10</sup> that a power plant developer bid on a site in eastern Carlsbad in the SDG&E RFO process (they were not selected) proving there are viable, economically feasible project sites in the City. In the CVEUP decision, CEC said that alternatives must be considered even if they are expensive <sup>11</sup>.

All of these topics have been exhaustively covered in the many, many docketed filings and presented at the February 2010 Evidentiary Hearing. And, yet we find the CEC ignored LORS, CEQA and California Coastal Commission requirements. At the very least, over-rides must be made to take into account the inconsistencies of CECP with Carlsbad's General Plan, Zoning and other land use documents. Inconvenient local rules do not make it reasonable for the Commission to simply ignore their existence.

If you must approve CECP, please continue the application to give the interested parties and the applicant an opportunity to scrutinize the proposed LAND-2 and LAND-3 conditions submitted recently by the applicant for the retirement of units 4 & 5 and the dismantling of Encina Power Station. POV questions whether this proposal meets the extraordinary public benefit requirements of the SCCRA and provides the required public benefits as prescribed in

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**<sup>9</sup> § 25516.1. Finding of relative merit of available alternative sites**

If a site and related facility found to be acceptable by the commission pursuant to Section 25516 is located in the coastal zone, the Suisun Marsh, or the jurisdiction of the San Francisco Bay Conservation and Development Commission, no application for certification may be filed pursuant to Section 25519 unless the commission has determined, pursuant to Section 25514, that such site and related facility have greater relative merit than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable by the commission pursuant to Section 25516.

<sup>10</sup> Evidentiary Hearing transcript dated Wednesday, February 3, 2010; page 448

<sup>11</sup> The project objectives formulated by Applicant and Staff include, in one form or another, the reuse of the existing plant's infrastructure such as project linears. While it may be advantageous to reuse existing infrastructure as long as it is serviceable and up-to-date if the reuse does not create or perpetuate adverse environmental impacts, the evidence shows that in this case there are few advantages beyond the obvious economic ones, and there are disadvantages that could be avoided by the use of a site in a General Industrial-Zoned area of Chula Vista.

the Warren-Alquist Act. Additionally, we ask that the applicant be required to obtain all permits from local and state authorities (i.e., State Lands commission, Regional Water Control Board, San Diego County Pollution Control districts) before start of construction.

It must be brought to the Commission's attention the hostile and dismissive language used in the Staff brief's as well as the PMPD. Power of Vision, Terramar and The City of Carlsbad are merely exercising our right to be a public part of the siting process. It is OUR city that will bear the brunt of your decision for the next 30-60 years. It is our citizens that will bear the brunt of increased air pollution, noise and visual degradation. Power of Vision's purpose is to protect the citizens of Carlsbad from an unnecessary, blighting, unhealthy, new power plant that will not benefit the community in one, single area. We implore you to reconsider the Presiding Member's decision to approve the applicant's license and deny the Carlsbad Energy Center Project. At the very least, you must make overrides in the areas of land use, fire safety, visual, coastal consistency and extraordinary public benefit. Your final report should temper the one-sided, often erroneous, and outdated statements of the PMPD.

Respectfully Submitted,

Arnold Roe, PhD

Julie Baker

Power of Vision



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
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**APPLICATION FOR CERTIFICATION  
FOR THE CARLSBAD ENERGY  
CENTER PROJECT**

**Docket No. 07-AFC-6  
PROOF OF SERVICE**  
(Revised 5/18/2011)

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\*Indicates change

## DECLARATION OF SERVICE

I, Julie Baker, declare that on June 8, 2011, I served and filed copies of the attached Power of Vision Comments on the Presiding Members preliminary Decision, dated June 8, 2011. The original document filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

[<http://www.energy.ca.gov/sitingcases/carlsbad/index.html>].

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

*(Check all that Apply)*

### FOR SERVICE TO ALL OTHER PARTIES:

sent electronically to all email addresses on the Proof of Service list;

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by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

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### CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 07-AFC-6 1516 Ninth Street,

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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Julie Baker

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\*indicates change